

From: [Morrison, Matthew W.](#)
To: [McKenna, Elizabeth](#)
Subject: EPA Letter on Tribal Litigation
Date: Friday, December 04, 2015 11:48:09 AM
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Hi Elizabeth – I don't know if you have had a chance to talk with Rick, but in the interim I had a couple of quick but important clarifying questions about the language in the letter. As I indicated last night, motions in limine are flying based on the paragraph EPA added about the Tribes.

1. When EPA says CCT has done work that helped direct the RI/FS, I am pretty sure it is not referring to expert work in litigation. I think EPA is referring to the CCT's participating party activities and maybe it's Preliminary Assessment activities (e.g., the work they did to identify mines and mills in the UCR). Is this correct?
2. On this same point, EPA states that the Tribes have collected data which have informed studies in RI/FS and will go in the AR. Can you please help us understand which studies EPA is referring to?
 - a. If these are the tribes expert reports, those studies are 5+ years old and they are not in the AR after all this time. I'm don't believe those reports could go into the AR because there was no EPA approved QAPP for them and that is an NCP requirement. Please let me know if you see that differently.
 - b. The fact that they are not there after this long may mean Rick is not referring to their expert work and must instead be referring to Tribes' RIFS participation work. Is that correct?
3. On the statement that the Tribes secured liability determination EPA will rely on for cleanup, it would be helpful to understand how EPA plans to rely on that.

- a. As you know, Teck has already done two cleanups independent of any such determination – Black Sand Beach per agreement with state, and upland soils per early action term in task 9 of statement of work – and Teck has neither been asked nor has refused any cleanup. In fact, I think EPA would agree that Teck made repeated offers to cleanup, in public and in writing. The pre-liability determination Settlement Agreement also provides for early action for early action and Teck complied with that for upland soil.
 - b. In short, we would appreciate knowing why and how EPA would “rely on the tribes for cleanup.”
4. Lastly, I would like to get a little more insight on the folks from the Tribes or on behalf of the Tribes who met with you and the Regional folks in asking that EPA support its case with testimony.

This is fairly urgent, of course, so I would greatly appreciate it if you would please call me on my cell – 571-253-3335 – as soon as you can.

Many thanks,

Matt

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